

SENATE BILL 163

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E3

2004 Regular Session  
4r1073  
CF 4r1124

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By: **Senators Kelley, Britt, Della, Exum, Frosh, Gladden, Grosfeld, Lawlah,  
McFadden, and Teitelbaum**

Introduced and read first time: January 23, 2004

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Juvenile Law - Waiver of Counsel**

3 FOR the purpose of prohibiting a child from waiving the right to the assistance of  
4 counsel except under certain circumstances; prohibiting a parent, guardian, or  
5 custodian of a child from waiving the child's right to the assistance of counsel;  
6 prohibiting the juvenile court from accepting a waiver of the child's right to the  
7 assistance of counsel except under certain circumstances; requiring the court to  
8 consider certain factors in determining whether a waiver is knowing and  
9 voluntary; requiring the court to continue and the clerk to reschedule a waiver  
10 or adjudicatory hearing under certain circumstances; requiring the clerk to  
11 issue a certain notice within a certain time period; requiring the Office of the  
12 Public Defender to enter an appearance for the child under certain  
13 circumstances; and generally relating to the right to the assistance of counsel in  
14 juvenile proceedings.

15 BY repealing and reenacting, with amendments,  
16 Article - Courts and Judicial Proceedings  
17 Section 3-8A-20  
18 Annotated Code of Maryland  
19 (2002 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Courts and Judicial Proceedings**

23 3-8A-20.

24 (a) Except as provided in subsection [(c)] (D) of this section, a party is entitled  
25 to the assistance of counsel at every stage of any proceeding under this subtitle.

26 (b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A  
27 CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL.

1 (2) A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD MAY NOT WAIVE  
2 THE CHILD'S RIGHT TO THE ASSISTANCE OF COUNSEL.

3 (3) AFTER A PETITION OR CITATION HAS BEEN FILED WITH THE COURT  
4 UNDER THIS SUBTITLE, IF A CHILD INDICATES A DESIRE TO WAIVE THE RIGHT TO  
5 THE ASSISTANCE OF COUNSEL, THE COURT MAY NOT ACCEPT THE WAIVER UNLESS:

6 (I) THE CHILD IS IN THE PRESENCE OF COUNSEL AND HAS  
7 CONSULTED WITH COUNSEL; AND

8 (II) THE COURT DETERMINES THAT THE WAIVER IS KNOWING AND  
9 VOLUNTARY.

10 (4) IN DETERMINING WHETHER THE WAIVER IS KNOWING AND  
11 VOLUNTARY, THE COURT SHALL CONSIDER, AFTER APPROPRIATE QUESTIONING IN  
12 OPEN COURT AND ON THE RECORD, WHETHER THE CHILD FULLY COMPREHENDS:

13 (I) THE NATURE OF THE ALLEGATIONS AND THE PROCEEDINGS,  
14 AND THE RANGE OF ALLOWABLE DISPOSITIONS;

15 (II) THAT COUNSEL MAY BE OF ASSISTANCE IN DETERMINING AND  
16 PRESENTING ANY DEFENSES TO THE ALLEGATIONS OF THE PETITION, OR OTHER  
17 MITIGATING CIRCUMSTANCES;

18 (III) THAT THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A  
19 DELINQUENCY CASE, OR A CHILD IN NEED OF SUPERVISION CASE, INCLUDES THE  
20 RIGHT TO THE PROMPT ASSIGNMENT OF AN ATTORNEY, WITHOUT CHARGE TO THE  
21 CHILD IF THE CHILD IS FINANCIALLY UNABLE TO OBTAIN PRIVATE COUNSEL;

22 (IV) THAT EVEN IF THE CHILD INTENDS NOT TO CONTEST THE  
23 CHARGE OR PROCEEDING, COUNSEL MAY BE OF SUBSTANTIAL ASSISTANCE IN  
24 DEVELOPING AND PRESENTING MATERIAL THAT COULD AFFECT THE DISPOSITION;  
25 AND

26 (V) THAT AMONG THE CHILD'S RIGHTS AT ANY HEARING ARE THE  
27 RIGHT TO CALL WITNESSES ON THE CHILD'S BEHALF, THE RIGHT TO CONFRONT AND  
28 CROSS-EXAMINE WITNESSES, THE RIGHT TO OBTAIN WITNESSES BY COMPULSORY  
29 PROCESS, AND THE RIGHT TO REQUIRE PROOF OF ANY CHARGES.

30 (C) Compensation for the services of an attorney appointed to represent a child  
31 in an action under this subtitle may be assessed by the court against any party or  
32 against a parent of the child.

33 [(c)] (D) (1) A party is not entitled to the assistance of counsel at a peace  
34 order proceeding.

35 (2) Paragraph (1) of this subsection does not affect the entitlement of a  
36 respondent to the assistance of counsel in a contempt proceeding as provided by law.

1 (E) (1) IF A CHILD APPEARS IN COURT WITHOUT COUNSEL FOR A WAIVER  
2 HEARING UNDER § 3-8A-06 OF THIS SUBTITLE, OR AN ADJUDICATORY HEARING  
3 UNDER § 3-8A-18 OF THIS SUBTITLE, AND THE CHILD HAS NOT PREVIOUSLY WAIVED  
4 THE RIGHT TO THE ASSISTANCE OF COUNSEL IN ACCORDANCE WITH SUBSECTION (B)  
5 OF THIS SECTION, THE COURT SHALL CONTINUE AND THE CLERK SHALL  
6 RESCHEDULE THE WAIVER OR ADJUDICATORY HEARING.

7 (2) THE CLERK SHALL ISSUE A NOTICE OF THE DATE, TIME, AND  
8 LOCATION OF THE HEARING AT LEAST 10 DAYS PRIOR TO THE DATE OF THE  
9 HEARING.

10 (3) THE OFFICE OF THE PUBLIC DEFENDER SHALL ENTER AN  
11 APPEARANCE FOR THE CHILD.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2004.